

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEVEN M.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C22-5445-BAT

**ORDER AFFIRMING THE
COMMISSIONER'S DECISION AND
DISMISSING THE CASE WITH
PREJUDICE**

Plaintiff appeals the denial of his application for Supplemental Security Income. He contends the ALJ erred by (1) failing to adopt PAC (Physician's Assistant—Certified) James Stauffer's opinion regarding (a) handling limitations, (b) reaching limitations, and (c) projection of days of absence; and (2) rejecting plaintiff's subjective testimony about the severity of his hand and arm limitations. Dkt. 23. As discussed below, the Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with prejudice.

BACKGROUND

Plaintiff is currently fifty years old, applied for benefits on November 7, 2016, and alleged disability as of August 1, 2013. Tr. 308–10. The agency denied his SSI application initially and on reconsideration, and the ALJ found him to be not disabled in a November 2018 decision. Tr. 309–58. The Appeals Council, however, vacated the ALJ’s 2018 decision and

1 remanded to (1) further evaluate plaintiff's impairments, including bilateral carpal tunnel
 2 syndrome, epicondylitis, and left shoulder impairment; (2) obtain additional evidence concerning
 3 plaintiff's impairments; (3) revisit the residual functional capacity ("RFC") assessment; and (4)
 4 obtain supplemental evidence from a vocational expert ("VE"). Tr. 362.

5 On remand, the ALJ held a hearing and issued a new decision on March 21, 2021. Tr.
 6 115–44. The ALJ determined that plaintiff had the severe impairments of **left elbow**
 7 **abnormality, status post-surgery; left shoulder dislocation and status post-surgery; lumbar**
 8 **degenerative disc disease; chronic obstructive pulmonary disease ("COPD"); peripheral**
 9 **neuropathy; bilateral carpal tunnel syndrome, status post-surgery; diabetes mellitus, type**
 10 **two; obesity; umbilical hernia; and anxiety.** Tr. 117–18. The ALJ determined that plaintiff has
 11 the RFC to perform light work with additional limitations, including that he can stand and walk
 12 or up to four hours; he can sit for up to six hours; **he can frequently bilaterally handle and**
 13 **finger; he can frequently reach with the left dominant arm, and occasionally reach**
 14 **overhead with it.** Tr. 122–23. Plaintiff had no past relevant work. Tr. 142. At step five of the
 15 sequential evaluation, the ALJ determined that there are jobs that exist in significant numbers in
 16 the national economy that plaintiff could perform, including garment sorter, mail room clerk, and
 17 hand packager and inspector. Tr. 142–44. The ALJ therefore found plaintiff to be not disabled.
 18 Tr. 144.

19 As the Appeals Council denied plaintiff's request for review, the ALJ's 2021 decision is
 20 the Commissioner's final decision. Tr. 1–4.

21 DISCUSSION

22 The Court will reverse the ALJ's decision only if it was not supported by substantial
 23 evidence in the record as a whole or if the ALJ applied the wrong legal standard. *Molina v.*

1 *Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012). The ALJ’s decision may not be reversed on account
 2 of an error that is harmless. *Id.* at 1111. Where the evidence is susceptible to more than one
 3 rational interpretation, the Court must uphold the Commissioner’s interpretation. *Thomas v.*
 4 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

5 Plaintiff contends that the ALJ improperly rejected (1) PAC Stauffer’s opinion regarding
 6 limitations on handling, reaching, and work absences; and (2) plaintiff’s subjective testimony
 7 about the severity of his hand and arm limitations. Plaintiff argues that had PAC Stauffer’s
 8 opinion and plaintiff’s symptom testimony been properly credited, the VE’s testimony
 9 demonstrates that plaintiff is disabled. The Court finds that the ALJ supported the decision to
 10 discount PAC Stauffer’s opinion and plaintiff’s subjective testimony with substantial evidence
 11 and did not commit harmful legal error.

12 **1. PAC Stauffer’s Opinion on Handling, Reaching, and Work Absences**

13 Plaintiff contends that the ALJ did not cite substantial evidence for rejecting PAC
 14 Stauffer’s opinion by failing to address adequately the opined restrictions on handling, reaching,
 15 and work absences. Plaintiff has not, however, demonstrated that the ALJ failed to cite germane
 16 reasons for rejecting PAC Stauffer’s opined limitations in those domains.

17 Because plaintiff applied for benefits in 2016, PAC Stauffer is not considered an
 18 acceptable medical source in this case. 20 C.F.R. § 416.902(a)(8). PAC Stauffer’s opinion is,
 19 nonetheless, relevant medical evidence and should be evaluated on key issues such as
 20 impairment severity and functional effects. SSR 06-03p, 2006 WL 2329939, at *3. The ALJ
 21 must consider PAC Stauffer’s other source opinion and may only reject the opinion by setting
 22 forth germane reasons. *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993).

1 In August 2020, PAC Stauffer filled out a three-page physical assessment form for
2 plaintiff. Tr. 1848–50. PAC Stauffer opined, among other limitations, that with respect to
3 reaching, handling, or fingering over the course of a workday, plaintiff could use his **right, non-**
4 **dominant upper extremity for handling/manipulating 10% with his hand and fingers** (and
5 100% for reaching in front of his body and overhead); and plaintiff could use his **left, dominant**
6 **upper extremity for reaching 10% in front of his body and overhead** (and 100% for
7 handling/manipulating with his hand and fingers). Tr. 1848. PAC Stauffer noted that the onset of
8 plaintiff's impairment of his **left shoulder had occurred in 2018**, and that the onset of plaintiff's
9 impairment of his **hands had been 8 to 10 years prior**. *Id.* PAC Stauffer commented that
10 plaintiff's left shoulder injury limited range of motion and strength, that carpal tunnel syndrome
11 limited fine manipulation, and that depression/PTSD caused mental problems. Tr. 1849. PAC
12 Stauffer opined that on average **plaintiff would be absent two days a month** due to a “[f]flare
13 up of multiple conditions.” *Id.*

14 The ALJ cited several reasons for giving low weight to PAC Stauffer's opinion. First, the
15 ALJ discounted the opinion because PAC Stauffer's “check-box form opinion provides little
16 explanation to how the claimant's impairments, symptoms, and/or treatment limit the claimant to
17 the extreme extent opined.” Tr. 134. This reason is germane. PAC Stauffer justified the
18 debilitating severity of the limitations affecting handling, reaching, and work absences only by
19 referring to longstanding carpal tunnel syndrome, a past shoulder injury, and the cumulative
20 impact of numerous conditions. PAC Stauffer did not, for example, indicate what examinations
21 he performed that indicated the assessed limitations or the basis for discrediting medical
22 evidence suggesting greater functionality and medical improvement.

1 Second, the ALJ discounted PAC Stauffer's opinion because although it was purportedly
 2 based on physical examinations, consultative opinions, and medical records, PAC Stauffer relied
 3 heavily on plaintiff's subjective assertions of symptoms and limitations. Tr. 134. PAC Stauffer
 4 does not indicate whether or to what degree the medical records differ from plaintiff's account of
 5 his limitations. As discussed more fully *infra*, the ALJ cited substantial evidence for discounting
 6 plaintiff's subjective testimony about the severity of his impairments.

7 Third, the ALJ discounted PAC Stauffer's opined degree of limitation as inconsistent
 8 with (a) plaintiff's September 2020 report of experiencing significant pain relief with
 9 hydrocodone while suffering no medication side effects, Tr. 1928; (b) plaintiff's improvement
 10 with surgery and other forms of treatment, *see, e.g.*, Tr. 1643–45, 1980; (c) September 2020
 11 exam findings showing that despite his complaints plaintiff was alert and mentally oriented, had
 12 a normal reciprocal gait, and had no foot drop, Tr. 1927; (d) claimant displayed no acute distress
 13 in most exams, *see, e.g.*, Tr. 1683, 1696, 1700, 1722, 1832, 1841, 1853, 1894, 1898, 1904, 1910,
 14 1927, 1948, 1975, 1977, 1982, 1986; and (e) plaintiff was noted repeatedly to have grossly
 15 normal strength and motor functioning, *see, e.g.*, Tr. 1474, 1476, 1479, 1485, 1488, 1882, 1904,
 16 1948. Tr. 133–34. Inconsistency with the medical record is a germane reason for discounting
 17 PAC Stauffer's opinion, and the ALJ's interpretation of that medical evidence was not
 18 unreasonable.

19 Fourth, the ALJ discounted PAC Stauffer's opinion as inconsistent with plaintiff's daily
 20 activities, which included performing self-care, driving, shopping, cooking, doing laundry,
 21 performing household chores, helping care for animals, and performing volunteer work. Tr. 134;
 22 *see, e.g.*, Tr. 517–19, 872, 1118, 1515, 1520, 1836. Whereas PAC Stauffer suggested that carpal
 23 tunnel syndrome has limited plaintiff's ability to handle with his right hand since at least 2012

1 and reported no waxing or waning of such symptoms, Tr. 1848, in 2016 plaintiff told a medical
 2 provider that he spent evenings playing video games, Tr. 816, which the ALJ noted “typically
 3 require rapid processing of information, some degree of finger, hand, and wrist dexterity, and
 4 some degree of hand-eye coordination,” Tr. 129. Inconsistency with plaintiff’s daily activities is
 5 a germane reason to discount PAC Stauffer’s opinion.

6 Plaintiff contends that the ALJ failed to discount PAC Stauffer’s opinion with sufficient
 7 detail with respect to handling, reaching, and work absences. This argument is unpersuasive. The
 8 ALJ reasonably concluded that PAC Stauffer had insufficiently explained the basis for opining
 9 that plaintiff had a 10% capacity for right-hand handling, a 10% capacity for left arm reaching,
 10 and the likelihood of missing two days of work per month. The conclusory nature of PAC
 11 Stauffer’s opinion is a germane reason for discounting it, as are heavy reliance on plaintiff’s own
 12 discounted testimony, inconsistency with the medical record, and inconsistency with plaintiff’s
 13 daily activities. The ALJ discounted the severity of plaintiff’s arm and hand limitations with
 14 reference to, among other examples, exam results showing 5/5 grip strength bilaterally, medical
 15 improvement after the shoulder injury, and engaging in daily activities that might suggest greater
 16 functionality. Moreover, it is reasonable for the ALJ to have discounted PAC Stauffer’s opinion
 17 that plaintiff would miss two workdays a month due to numerous, cumulative limitations by
 18 referring to medical, testimonial, and daily activity examples of plaintiff’s greater capacity to
 19 function.

20 The Commissioner argues that a conflict with January 2017 opinion of examining
 21 physician Dr. Gary Gaffield, DO, serves as an additional, independent and germane reason for
 22 discounting the September 2020 opinion of PAC Stauffer, though the ALJ did not specifically
 23 cite Dr. Gaffield when rejecting PAC Stauffer’s opinion. Dkt. 24, at 3, 7. Plaintiff is correct to

1 note that Dr. Gaffield's 2017 opinion could not properly serve as the sole and independent reason
2 for discounting PAC Stauffer's opinion given the Appeals Counsel remanded due to subsequent
3 reports of carpal tunnel syndrome release surgery and a shoulder injury. Dkt. 25, at 3–6. Dr.
4 Gaffield's opinion is not, however, irrelevant. PAC Stauffer stated that plaintiff's hand
5 limitations due to carpal tunnel syndrome began between 2010 and 2012 and did not opine that
6 the hand limitations had become more severe in succeeding years. Tr. 1848. That Dr. Gaffield
7 opined no limitations to plaintiff's manipulative activities and noted that plaintiff engaged in
8 motorcycle repair as a hobby also serve as germane reasons to discount PAC Stauffer's
9 generalized account of severe handling restrictions beginning at latest in 2012.

10 On appeal, the question before the Court is not whether there is sufficient evidence to
11 demonstrate that plaintiff is disabled based upon PAC Stauffer's opined limitations of occasional
12 handling with the right hand, occasional reaching with the left arm, and the likelihood of missing
13 two days of work per month. The question is whether the ALJ cited germane reasons for
14 discounting PAC Stauffer's opinion about handling, reaching, and work absences. Moreover, the
15 Court will uphold the ALJ's interpretation if the evidence is susceptible to more than one rational
16 interpretation. *See Thomas*, 278 F.3d at 954. The Court finds that the ALJ cited germane reasons
17 for discounting PAC Stauffer's opinion regarding handling, reaching, and work absences.

18 **2. Plaintiff's Subjective Symptom Testimony**

19 Plaintiff challenges the ALJ's assessment of his hand and arm limitations. Dkt. 23, at 9.
20 Plaintiff has not, however, demonstrated that the ALJ failed to provide specific, clear and
21 convincing reasons for discounting plaintiff's subjective symptom testimony about the severity
22 of his hand and arm limitations.

1 An ALJ may discredit a claimant's subjective complaints by providing "specific, clear
 2 and convincing reasons" for doing so. *Morgan v. Commissioner of SSA*, 169 F.3d 595, 599 (9th
 3 Cir. 1999). "An ALJ is not required to believe every allegation of disabling pain, or else
 4 disability benefits would be available for the asking, a result plainly contrary to the Social
 5 Security Act." *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022) (internal quotation marks
 6 and citation omitted). The clear and convincing "standard isn't whether our court is convinced,
 7 but instead whether the ALJ's rationale is clear enough that it has the power to convince." *Id.*

8 At the December 2020 hearing, plaintiff testified that his right hand hurts all the time, he
 9 cannot lift anything with it, and if he holds onto anything, it drops out of his hand. Tr. 282. He
 10 testified that he experiences sharp pains on his left arm, shooting down from his left elbow down
 11 to his hand, and surgery did nothing to improve it. Tr. 283. Plaintiff stated that his left arm hurts
 12 raised halfway up, he cannot reach overhead, and his pain and range of motion was about the
 13 same before and after shoulder surgery. Tr. 283–84.

14 The ALJ stated three reasons for discounting the severity of plaintiff's testimony
 15 regarding using his hands, lifting his arms, and the associated pain and numbness. First, the ALJ
 16 found that plaintiff's subjective testimony was inconsistent with the medical evidence. Tr. 123–
 17 26; *see Smartt*, 53 F.4th at 498 ("When objective medical evidence in the record is *inconsistent*
 18 with the claimant's subjective testimony, the ALJ may indeed weigh it as undercutting such
 19 testimony."). In January 2019, plaintiff had left elbow, left carpal tunnel release, and left
 20 shoulder rotator cuff repair surgery. Tr. 1746–47, 1793, 1796. In an April 19, 2019 examination,
 21 plaintiff was seen by a physician with complaints of pain in his left shoulder and decreased
 22 ability to move his left arm after a slip and fall. Tr. 1636. The physician noted that plaintiff was
 23 in no apparent distress while x-rays showed a fairly well maintained subacromial and

1 glenohumeral space and no apparent fracture. *Id.* The physician also noted three months status
2 post rotator cuff repair, plaintiff showed reasonable rotator cuff strength and limited range of
3 motion in the left shoulder. *Id.* Plaintiff was prescribed pain killers and informed that if his pain
4 increased a repeat MRI might be called for. *Id.* In an April 22, 2019 examination following left
5 carpal tunnel release, plaintiff indicated that the symptoms in his left hand had improved
6 significantly since the carpal tunnel release. Tr. 1980. On May 17, 2019, plaintiff reported
7 having no pain in his left hand and left hand grip strength testing showed normal results. Tr.
8 1752, 1754. In the same month, plaintiff had right carpal tunnel release and at his two-week
9 follow-up examination on May 23, 2019, for right wrist and incisional pain, the physician's
10 assistant noted mildly improved symptoms, recommended physical therapy to improve range of
11 motion, and opined that pain would continue to improve. Tr. 1634. Although in mid-July 2020,
12 plaintiff reported persistent right hand numbness, right hand pain, and "excruciating" right wrist
13 pain, the physician noted plaintiff was in no acute distress and that the MRI showed some mild
14 thickening of the median nerve and moderate degenerative changes throughout the wrist. Tr.
15 1910–1912. As the ALJ noted, the physician referred plaintiff for a nerve conduction study and
16 did not suggest aggressive medical treatment. Tr. 123, 1912. In late-July 2020, the physician
17 noted that although the updated electrodiagnostic testing showed mild median neuropathy at the
18 wrist bilaterally, "this may be a residual finding from his prior carpal tunnel syndrome and does
19 not necessarily represent true recurrence/persistent carpal tunnel syndrome. This should be
20 clinically correlated and interpreted with caution. Otherwise, the bilateral upper limb testing is
21 normal." Tr. 1904. In addition, upon examination, strength was 5/5 throughout the bilateral upper
22 limbs and his muscle bulk and tone were normal. *Id.*

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1 Second, the ALJ found that plaintiff's hand and arm impairments improved with
2 treatment. Tr. 122–25. Evidence for medical treatment successfully relieving symptoms can
3 undermine a claim of disability. *See* 20 C.F.R. § 404.1529(c)(3)(iv)–(vi); *Wellington v. Berryhill*,
4 878 F.3d 867, 876 (9th Cir. 2017). Plaintiff reported that “symptoms in the left hand have
5 significantly improved since his carpal tunnel release.” Tr. 1980. After right carpal tunnel
6 release, plaintiff reported being happy with the surgery results despite some persistent symptoms,
7 including lack of full extension and numbness on several fingers. Tr. 1633–34. Although plaintiff
8 requested Naproxen for pain relief, the physician advised against this. Tr. 1634. The physician
9 instead prescribed Tylenol and recommended physical therapy, and plaintiff reported being
10 satisfied with this treatment plan. *Id.* In June 2019, plaintiff denied any pain in his left shoulder.
11 Tr. 1816. And, as mentioned earlier, in late-July 2020, plaintiff exhibited 5/5 strength throughout
12 his bilateral upper limbs alongside normal muscle bulk and tone. Tr. 1904.

13 Third, the ALJ found that plaintiff's activities of daily living contradicted his testimony
14 about the severity of his impairments. Tr. 128–29; *see Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.
15 2007). Contrary to plaintiff's allegations that he has severe problems lifting, using his arms, and
16 using his hands, plaintiff engaged in activities that used his hands and arms, including managing
17 his personal care, driving, shopping, cooking, household chores, washing clothes by hand,
18 working on a computer, and caring for animals. Tr. 517–19, 872, 1118, 1515, 1520, 1836.
19 Plaintiff is correct to note that these daily activities do not suggest transferability of skills to the
20 workplace in a typical, eight-hour workday. It was, however, reasonable for the ALJ to cite such
21 activities as conflicting with plaintiff's account regarding the severity of his hand and arm
22 limitations when viewed in light of contradictory medical evidence and indications of medical
23 improvement.

1 On appeal, the question is not whether plaintiff's symptom testimony is supported by
2 substantial evidence but whether the ALJ cited specific, clear and convincing reasons to discount
3 plaintiff's testimony. The ALJ did so by referring to the inconsistency between plaintiff's
4 testimony about hand and arm limitations and the medical evidence, indications of medical
5 improvement, and plaintiff's activities of daily living.¹

6 **CONCLUSION**

7 For the foregoing reasons, the Commissioner's decision is **AFFIRMED** and this case is
8 **DISMISSED** with prejudice.

9 DATED this 9th day of January, 2023.

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11 BRIAN A. TSUCHIDA
12 United States Magistrate Judge

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22 ¹ The Court reiterates that on appeal it may not retry the facts and may review only whether the
ALJ's decision was supported by substantial evidence and was free from harmful legal error. As
the Appeals Council noted when rejecting consideration of supportive medical records outside of
the period at-issue, plaintiff is not precluded from filing a new claim asserting disability for the
period after the ALJ decision date of March 26, 2021. Tr. 2.